SUPREME COURT OF THE UNITED STATES.

No. 288.

DECEMBER TERM, 1868.

THE UNITED STATES EX REL. HENRY AMY, PLAINTIFFS IN ERROR,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF BURLINGTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR DISTRICT OF IOWA.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation	2	1
Petition for mandamus	5	2
Mandamus	10	4
Order	13	6
Answer	14	6
Demurrer	20	8
Entry of record	22	9
Bond	23	9
Certificate	25	10
Assignment of errors	26	11

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the Circuit Court of the United States for the district of Iowa, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea, which is in said Circuit Court, before you, between the U. S. on the rel. of Edward H. Learned, plaintiff, and the Mayor and Aldermen of the city of Burlington, defendant, a manifest error hath happened to the great damage of the said plaintiff, as by his complaint appears, and we, being willing that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of tha United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 2d day of June, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second.

In testimony whereof the clerk of said court has affixed his name and seal of said Circuit Court the date above written.

[SEAL.]

W. G. WOODWARD,
Cl'k of the Circuit Court of the United States District of Iowa.

The execution of this writ appears by the transcript hereto annexed. A copy of this writ was lodged in this office for the defendant on the second day of June, 1868.

W. G. WOODWARD, *Clerk.*

2 UNITED STATES OF AMERICA, *ss:*

To the mayor and aldermen of the city of Burlington, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the district of Iowa, wherein the United States on the relation of Edward H. Learned is plaintiff and the Mayor and Aldermen of the city of Burlington are defendants in error, to show cause, if any there be, why the judment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Sam'l F. Miller, justice of the said Supreme Court, this 16th day of June, in the year of our Lord 1868.

SAM'L F. MILLER,
One of the Justices of the Supreme Court of the United States.

Def't accepts service of this citation by copy, &c.
Mar. 21, '68.

H. STRONG,
Att'y for Mayor and Aldermen of City of Burlingt.

3 Due and legal service hereof accepted, this 21 day of June A. D. 1868, and copy received.

H. STRONG,
Att'y for the Mayor and Aldermen of the City of Burlington.

4 In Cir. C't.

THE UNITED STATES, ON THE RELATION of Edward H. Learned,
vs.
THE MAYOR AND ALDERMEN OF THE City of Burlington.
No. 478.

Proceedings before the Circuit Court of the United States in and for the district of Iowa at a term thereof begun and holden at Des Moines, on the second Tuesday of May, A. D. 1868.

Be it remembered that, on the 16th day of October, A. D. 1867, there was filed in the office of the clerk of the said Circuit Court a petition for a writ of mandamus in the words following, viz:

5 In the Circuit Court of the United States for the district of Iowa. October term, A. D. 1867.

Petitition for Mandamus.

THE UNITED STATES ON THE RELATION of Edward H. Learned,
vs.
THE MAYOR AND ALDERMEN OF THE City of Burlington, Iowa.

To the judges of the Circuit Court of the United States for the district of Iowa:

Edward H. Learned, who avers that he is a citizen of the State of Connecticut, gives this court to be informed that, on the 15th
6 day of May, A. D. 1867, by judgment and consideration of this court, upon due process of law, he recovered judgment against the city of Burlington for the sum of $3,383 68, and costs taxed at $109 23, and 8 p. c. interest from the date of said judgment.

That, on the 21st day of March, A. D. 1862, in the United States District Court for the State of Iowa, at Keokuk, to the jurisdiction of which court this court has, by act of Congress, succeeded, the said Edward H. Learned recovered a judgment, upon due process of law, against the city of Burlington for the sum of $4,328 25, costs taxed at $, and ten per cent. interest from the date of said judgment, and the judgments of said court are under the control and custody of this court, and upon said judgment now remains due and unpaid the sum of $1,046 25 and costs.

That said city of Burlington is a municipal corporation created by and a citizen of the State of Iowa; that its municipal affairs are conducted and managed by a mayor and aldermen, who perform all the duties of said corporation in relation to levying and causing to be collected taxes and paying the debts of the corporation.

That executions have been issued upon said judgments and
7 returned no property found, to which judgments and executions now in this court and subject to its inspections reference is hereby made.

That said city has no property subject to execution, out of which said judgments can be made. That by the general laws of the State of Iowa all the property of a public nature owned by the said corporation is exempt from execution.

That the said general laws of the State of Iowa require in such case that the mayor and Aldermen of the said city should levy a tax as early as practicable to pay said judgments. That said mayor and aldermen are authorized by the charter of said city to levy a tax of one per cent. per year on all the taxable property of said city, which amounts to about the sum of three millions of dollars.

That under the laws it was the duty of the mayor and aldermen of said city to levy a tax of at least one per cent. on the valuation in said city, in the year 1866, to pay said judgments, interest and costs.

That they have neglected to do so, though sufficient time for that purpose has elapsed, and demands have been made on them to levy and collect sufficient taxes to pay said judgments.

8 The relator is without other adequate remedy at law, and he prays of this court that a writ of mandamus may be issued from this court commanding the mayor and aldermen of the city of Burlington to forthwith levy, and cause to be collected, a tax on the taxable property of said city for the year 1867, sufficient to pay said judgments, and to apply said tax, when collected, to the payment of said judgment of $3,383 68 costs, taxed at $109 23, and 8 per cent. interest from the date of said judgment, and said balance of judgment of $1,046 25 and costs, taxed at $, and 10 per cent. interest from date of commencement of this action, and the costs of this proceeding, and for such other relief as relator's case requires.

(Signed) EDWARD H. LEARNED.

STATE OF IOWA, *Scott County, ss:*

I, J. Grant, do state on oath, that I am relator's att'y, and have a personal knowledge of the recovery and nonpayment of said judg-

ment and demand for levy of taxes, and believe all the allegations of said petition to be true.

(Signed) JAMES GRANT.

Subscribed and sworn to by J. Grant, before me, and in my presence, this the 1st day of October, 1867.

[SDAL.] S. F. SMITH, *N. P. Scott Co., Iowa.*

Filed Octo. 16, '68.

(Signed) W. G. WOODWARD, *Clerk.*

9 And on the same 16th day of October, A. D. 1867, it then being of the said October term of the said Circuit Court, the following order and entry of record were made, viz:

THE UNITED STATES EX REL. EDWARD H. Learned
v.
THE MAYOR AND ALDERMEN OF THE CITY of Burlington. } No. 478.

This cause now coming on to be heard, Grant, for the relator, files his information for a writ of mandamus, and the court doth order that an alternative writ be issued as asked, returnable at the next term.

10 And on the 24th day of October, A. D. 1867, a writ of alternative mandamus was issued from the office of the clerk, as follows, that is:

The United States of America to the mayor and aldermen of the City of Burlington:

Whereas it has been represented to our Circuit Court of the United States for the district of Iowa, that Edward H. Learned is a citizen of the State of Connecticut, and that on the 15th day of May, A. D. 1867, by the judgment and consideration of this court, upon due process of law, he recovered judgment against the city of Burlington for the snm of $3,383 68 and costs taxed at $109 23, and 8 per cent. interest from the date of said judgment.

That on the 21st day of March, A. D. 1862, in the United States District Court for the State of Iowa, at Keokuk, to the jurisdiction of which court this court has, by act of Congress, succeeded, the said Edward H. Learned recovered a judgment upon due
11 process of law against the city of Burlington for the sum of $4.328 25 costs taxed at $, and ten per cent. interest from the date of said judgment, and the judgments of said court are now under the control and custody of this court, and that upon said judgment now remains due and unpaid the sum of $1,046 25 and costs.

That said city of Burlington is a municipal corporation, created

by, and a citizen of, the State of Iowa. That its municipal affairs are conducted and managed by a mayor and aldermen, who perform all the duties of said corporation in relation to levying and causing to be collected taxes, and paying the debts of the corporation. That executions have been issued on said judgments and returned no property found, to which judgments and executions, now in this court and subject to its inspection, reference is made.

That said city has no property subject to executions out of which said judgments can be made. That by the general laws of the State of Iowa, all the property of a public nature, owned by the said corporation, is exempt from execution.

That the said general laws of the State of Iowa require in each case that the mayor and Aldermen of the said city should levy a tax as early as practicable to pay said judgments. That said mayor and aldermen are authorized by the charter of said city to levy a
12 tax of one per cent. per year on all the taxable property of said city, which amounts to about the sum of three millions of dollars.

That under these laws it was the duty of the mayor and aldermen of said city to levy a tax of at least one per cent. on the valuation in said city in the year 1866, to pay said judgments, interest and costs.

That they have neglected to do so, though sufficient time for that purpose has elapsed, and demands have been made on them to levy and collect sufficient taxes to pay said judgments. That the relator is without other adequate remedy at law.

Now, therefore, we being willing that full and speedy justice should be done in the premises, do hereby command you, the said mayor and aldermen of the city of Burlington, to forthwith levy and cause to be collected, a tax on the taxable property of said city for the year A. D. 1867, sufficient to pay said judgments, and to apply the said tax, when collected, to the payment of said judgments of $3,383 68, costs taxed at 109 23, and 8 per cent. interest from May 15th, 1867, and $1,046 25 and costs, and ten per cent. interest from Sept. 1st., 1867, and the costs of this proceeding; or that you appear before our said Circuit Court at Des Moines, at the court-
13 house, in Polk county, on the 12th day of May, A. D. 1868, to show cause why you refuse so to do.

Witness the Hon. Salmon P. Chase, chief justice of our Supreme Court and the seal of said Circuit Court, this 24th day of October, A. D. 1867.

[SEAL.] (Signed) W. G. WOODWARD, *Clerk.*

We, the mayor and alderman of the city of Burlington, accept due and legal service of the original writ of mandamus, of which the within is a copy, on this the 10th day of February, A. D. 1868, and waive service of same by marshal.

(Signed) L. TEEDRICK,
Mayor pro tem. by order of the city council.

Filed May 12th 1868.

(Signed) W. G. WOODWARD.

14 Afterward, on the 14th day of May, A. D. 1868, the following entry of record was made, to wit.

U. S. ex rel. Edw. H. Learned
v.
Mayor and Aldermen of the city of Burlington. } No. 478.

In this cause leave is given to move or plead by Tuesday of the third week of the term.

15 And on the 21st day of May, 1868, an answer to the writ of alternative mandamus was filed as follows, viz:

Circuit Court of the U. S.

Answer.

U. S. ex rel. Edward H. Learned
vs.
Mayor and Ald'n, Burlington.

Now come respondents and answer the alternative writ of mandamus, and for answer state:

They have ever been and now are well disposed to obey all orders and mandates of this court in the premises, and they show as a cause why they have not obeyed said alternative writ of mandamus by levying the said tax and why the peremptory writ of mandamus should not issue,—

That as the common council of said city, they have no power or legal authority to levy any tax whatever, except in the man-
16 ner and for the purpose, and to the extent provided in the charter of said city and its amendments, which are public statutes passed and approved prior to A. D. 1852, and are hereby referred to and made a part of this answer.

That by said charter it is provided as follows, to wit: That to defray the current expenses of the city, the city council (which is composed of these respondents) shall have the power to levy and collect taxes on all the real and personal property of said city, not exempt by the general law from taxation: Provided, that the amount of tax levied shall not in any one year exceed one dollar on each one hundred dollars worth of property taxed; that herefore, for many years, to wit, ever since the maturity of said obligations, upon which relator recovered said judgment, the said city council has levied said tax of one per cent. upon all the taxable property in the city, and the proceeds of such levy when collected have been appropriated and expended in paying the current expenses of said city, and the whole amount of said levy has been necessary to pay the actual necessary current expenses of the city and to maintain and to preserve the chartered rights, powers and obligations of the said city and the entire

revenue of the said city has in good faith and without any
17 evasion been appropriated, used and expended for such purpose and there is no surplus thereof remaining unexpended.

That the assessed value of all the taxable property within said city is about $3,200,000 and no more. That the assessment for the year A. D. 1868, has not yet been made out and completed, and the time prescribed by law for making the same has not expired. That the said assessment is now being made out by the assessor of said city, but that the same will not amount to more than $3,200,000.

That it will require the appropriation and expenditure of the levy of one per cent. thereon to meet and pay the actual current necessary expenses of said city, and to preserve the corporate existence and government of said city for the year A. D. 1868, to pay the officers of the said city to enforce its laws and ordinances, and to preserve the peace of said city, and thereby to protect the citizens thereof in their rights of person and property, to repair and maintain the streets, alleys and ways of the city, to abate nuisances and to keep the said streets in a cleanly and healthful condition, and in all ordinary and needful ways to pay the expenses actually necessary to maintain the existence and perform the obligations of said corporation.

That many of the streets of said city are in a dangerous and
18 unpassable condition on account of want of means to repair the same, and the citizens are continually liable to suffer great inconvenience and injury on account of the condition of said streets, and the city is in danger of becoming liable and being compelled to pay large damages for and on account of the injuries to its citizens growing out of the dangerous condition of its streets and alleys.

That the law requires said city and respondents as its proper officers to keep the streets in a passable and safe condition for use and travel.

That a stream, known as "Hawkeye Creek," runs through the centre of said city for more than a mile. That the embankments and walls protecting and preventing the overflow of said stream and the bridges crossing the same, have been destroyed to a great extent, and large expenditures are absolutely necessary and will be needed during the current year to repair and maintain the same and to prevent great loss, injury and damage growing out of the want of protection to the property in said city against the overflow and washing of the water of said stream, and the injury to the property and health of the citizens thereby and the want of bridges to cross the same.

That other important and necessary streets and crossings in said city, have been greatly damaged and rendered impassable by heavy rains and now need absolutely repair to make them passable, and
19 to open the gutters and water-ways of the city.

That the whole amount of tax which respondents are authorized by law to levy, will not exceed $32,000, or one per cent. of the assessed value of the taxable property. The report of the mayor for year ending February, A. D. 1867, is hereto annexed, showing the purposes for which said revenue has been expended; and respondents are advised and believe that a still greater amount will be required for the year A. D. 1868, for similar purposes.

That said limitation existed when said bonds were issued, which fact was well known to relator.

That the said city is without any other means, and is without credit, and has no power to levy any additional tax or to appropriate any part of said tax to the payment of plaintiff's debt. Defendants deny it is their duty to levy any additional tax, or to pay relator's claim; deny that they have in any manner neglected or refused to discharge or perform their entire duty in the premises, and pray to be discharged.

(Signed) H. STRONG,
Att'y for Respondents.

I, L. Teedrick, on oath, state, I am president of city council
20 of city of Burlington; that the mayor is absent; that I have heard the foregoing answer read, and I believe the allegations therein contained are true.

(Signed) L. TEEDRICK,
Mayor pro tem.

Subscribed and sworn to by L. Teedrick before me this 15th of May, A. D. 1868.

[SEAL.] (Signed) SEWARD SMITH,
Notary Public, Polk Co., Iowa.

Filed May 21st, 1868.

(Signed) W. G. WOODWARD, *Clerk.*

21 And on the same 21st day of May, 1868, was filed the following demurrer to the answer of the respondents, viz:

U. S. Circuit Court for district of Iowa.

Demurrer.

THE U. S. EX. REL. EDWARD H. LEARNED
vs.
THE MAYOR AND ALDERMEN CITY OF Burlington.

Now comes the plaintiff, by Grant, his att'y, and says he ought not to be barred from having his writ by reason of anything in said return alleged, because, he says, the same is not sufficient in law to bar the relief sought; wherefore he prays judgment, &c.

And for causes of demurrer to said return, the plaintiff says:

1st. This writ is applied for under the code of 1851, in force when the bonds were issued; where execution has been issued and returned nulla bona, and is not for any relief under the special laws in
22 relation to the city before that time. The execution law of 1851, provides that in such case as is made by the petition and writ, a tax shall be levied sufficient to pay the judgment, and the spe-

cial restrictions of the city charter, either before or after the code of 1851, do not and cannot alter the rights under it, accruing to the relator; which rights are irrepealable.

2d. Because the return does not set out any specific expenditures or necessity for expenditures, under the city charter which the plaintiff could traverse and try before a jury, or to which he could demur and ask for the judgment of the court.

3d. Because no account of expenses referred to as being made by the mayor is annexed to the return.

4th. Because no bar is set up to the relief sought under the general laws of the State, either by way of a repeal or qualification, and the plaintiff's remedy is sought under a general law, and not the special charter of the city.

Wherefore, &c.

(Signed) GRANT, *For Plaintiff.*

Filed May 21, 1868.

(Signed) W. G. WOODWARD, *Clerk.*

23 Afterwards, on the 27th day of May, 1868, the following motion to quash the return of the defendants to the writ of alternative mandamus. That is to say:

U. S. Circuit Court for the district of Iowa.

Motion to quash return.

U. S. EX. REL. EDWARD H. LEARNED
vs.
THE MAYOR AND ALDERMEN OF CITY OF Burlington.

The plaintiff moves to quash the said return, filed on May 21st, 1866, and for a peremptory writ:

1st Because said return is no bar to the relief sought, and is wholly insufficient for a defence, in this—

The plaintiff claims the relief sought under the general laws of the State which require the corporation, defendant, to levy a tax sufficient to pay the judgments on return of nulla bona and demand, and
24 the answer sets up a limitation of taxing power under the special charter of the city:

1st. Because the defendant corporation, having allowed the debt of the plaintiff to accrue and remain unpaid, and judgment to be recovered thereon, the judgment is a superior lien on the revenues of the city to new current expenses, which have been created since the recovery of the judgments; and the relator is entitled to the whole revenue of the city to pay his judgments, less the cost of collection, in preference to new debts, whether they are necessary to the existence or convenience of the city.

(Signed) GRANT, *For Plaintiff.*

Filed May 27th, 1868.

(Signed) W. G. WOODWARD, *Clerk.*

25 And afterwards, on the 27th day of May, A. D. 1868, it then still being of the said May term, 1868, the following entry was made of record, that is to say:

UNITED STATES EX REL. EDWARD H. LEARNED
v.
MAYOR AND ALDERMEN OF CITY OF BURLINGTON. } No. 478.

This cause now came on to be heard, Grant & Smith for the plaintiff, and Strong for the defendants. Upon argument on the plaintiff's demurrer to the defendants' return to alternative writ of mandamus, the said demurrer is overruled, and the relator electing to abide by his demurrer, the writ is dismissed, with costs against the relator. Whereupon the relator prays a writ of error, which is allowed, upon his giving bond in the penal sum of five hundred dollars, as required by law.

26 And afterward, on the 19th day of June, 1868, an appeal bond was filed, of the tenor following, viz:

Circuit Court of the U. S. for the district of Iowa.

Know all men by these presents, that we, Edward H. Learned, as principal, and Charles Whitaker, as surety, are held and firmly bound unto the mayor and aldermen of the city of Burlington, Iowa, in the penal sum of five hundred dollars, to which payment, we bind ourselves and each of us.

Given under our hands this 1st day of June, A. D. 1868.

The condition of this obligation is such, that if said obligors shall prosecute to effect a writ of error from the Supreme Court of the United States to the Circuit Court of the same for the district of Iowa, in a cause wherein said obligor, Edward H. Learned, is plaintiff in error, and said obligee is defendant in error, and answer to the defendant in error, and pay all damages and costs if they fail to make their plea good, this obligation is to be void, otherwise to remain in full force.

(Signed) EDWARD H. LEARNED,
By GRANT & SMITH,
His Att'ys.

(Signed) C. WHITAKER.

We know this bond to be good for the amount named.

(Signed) SMITH & GRANT, *Att'ys.*

Approved by—

SAM. F. MILLER.

Filed June 10th, 1868.

(Signed) W. G. WOODWARD, *Cl'k.*

27 Circuit Court of the United States, district of Iowa.

I, W. G. Woodward, clerk of the Circuit Court of the United States, in and for the district of Iowa, hereby certify that the foregoing twenty-three pages of writing constitute and are a full, true and complete transcript of the record and proceedings, and of the bond filed, in the above-entitled cause, as they remain of record and on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of the said Circuit Court, at Des Moines, this 22d day of July, A. D. 1868.

[SEAL.] W. G. WOODWARD, *Clerk.*

Clerk's fees.

Transcript, 48 fol	$5 80
Certif. and seal	35
	6 15

28 Supreme Court of the United States, December term, 1868.

In error to the district of Iowa.

THE UNITED STATES EX RE. EDWARD H. Learned, plaintiff in error,
v.
THE MAYOR AND ALDERMEN OF THE CITY of Burlington, defendant in error.

Now comes the plaintiff, by Grant, his attorney, and says that in the record and proceedings of the court there is error in this, to wit:

1st. The court below erred in overruling the plaintiff's demurrer to the defendant's return to writ.

2. The court erred in dismissing the plaintiff's writ.

Wherefore he prays that said judgment may be reversed, with his costs, &c.

GRANT,
For plaintiff in error.

Endorsed: In U. S. Sup. Court. The U. S. ex rel. Edward H. Learned vs. The Mayor and Aldermen of the city of Burlington. Assignment of errors.

25 And afterwards, on the 27th day of May, A. D. 1868, it then still being of the said May term, 1868, the following entry was made of record, that is to say:

UNITED STATES EX REL. EDWARD H. LEARNED
v.
MAYOR AND ALDERMEN OF CITY OF BURLINGTON. } No. 478.

This cause now came on to be heard, Grant & Smith for the plaintiff, and Strong for the defendants. Upon argument on the plaintiff's demurrer to the defendants' return to alternative writ of mandamus, the said demurrer is overruled, and the relator electing to abide by his demurrer, the writ is dismissed, with costs against the relator. Whereupon the relator prays a writ of error, which is allowed, upon his giving bond in the penal sum of five hundred dollars, as required by law.

26 And afterward, on the 19th day of June, 1868, an appeal bond was filed, of the tenor following, viz:

Circuit Court of the U. S. for the district of Iowa.

Know all men by these presents, that we, Edward H. Learned, as principal, and Charles Whitaker, as surety, are held and firmly bound unto the mayor and aldermen of the city of Burlington, Iowa, in the penal sum of five hundred dollars, to which payment, we bind ourselves and each of us.

Given under our hands this 1st day of June, A. D. 1868.

The condition of this obligation is such, that if said obligors shall prosecute to effect a writ of error from the Supreme Court of the United States to the Circuit Court of the same for the district of Iowa, in a cause wherein said obligor, Edward H. Learned, is plaintiff in error, and said obligee is defendant in error, and answer to the defendant in error, and pay all damages and costs if they fail to make their plea good, this obligation is to be void, otherwise to remain in full force.

(Signed) EDWARD H. LEARNED,
By GRANT & SMITH,
His Att'ys.

(Signed) C. WHITAKER.

We know this bond to be good for the amount named.
(Signed) SMITH & GRANT, *Att'ys.*

Approved by—
SAM. F. MILLER.

Filed June 10th, 1868.
(Signed) W. G. WOODWARD, *Cl'k.*

27 Circuit Court of the United States, district of Iowa.

I, W. G. Woodward, clerk of the Circuit Court of the United States, in and for the district of Iowa, hereby certify that the foregoing twenty-three pages of writing constitute and are a full, true and complete transcript of the record and proceedings, and of the bond filed, in the above-entitled cause, as they remain of record and on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of the said Circuit Court, at Des Moines, this 22d day of July, A. D. 1868.

[SEAL.] W. G. WOODWARD, *Clerk.*

Clerk's fees.

Transcript, 48 fol	$5 80
Certif. and seal	35
	6 15

28 Supreme Court of the United States, December term, 1868.

In error to the district of Iowa.

THE UNITED STATES EX RE. EDWARD H. Learned, plaintiff in error,
v.
THE MAYOR AND ALDERMEN OF THE CITY of Burlington, defendant in error.

Now comes the plaintiff, by Grant, his attorney, and says that in the record and proceedings of the court there is error in this, to wit:

1st. The court below erred in overruling the plaintiff's demurrer to the defendant's return to writ.

2. The court erred in dismissing the plaintiff's writ.

Wherefore he prays that said judgment may be reversed, with his costs, &c.

GRANT,
For plaintiff in error.

Endorsed: In U. S. Sup. Court. The U. S. ex rel. Edward H. Learned vs. The Mayor and Aldermen of the city of Burlington. Assignment of errors.

SUPREME COURT OF THE UNITED STATES.

THE U. S. ex. re.
EDWARD H. LEARNED,
Plaintiff in Error.
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF BURLINGTON, IOWA,
Defendants in Error.

ERROR TO THE DISTRICT OF IOWA.

STATEMENT AND POINTS.

This case is precisely like the one between the same parties, No. 287 on this docket. The decisions in that case will dispose of this.

JAS. GRANT,
For the Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

THE U. S. ex. re.,
HENRY AMY,
Plaintiff in Error.
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF BURLINGTON, IOWA,
Defendants in Error.

ERROR TO THE DISTRICT OF IOWA.

ARGUMENT FOR PLAINTIFF IN ERROR.

This cause is precisely like the two causes of United States, Learned vs. The City of Burlington, No. 289 and U. S. *ex. re.* Thomas Butzs vs. The Mayor and Aldermen of the City of Muscatine, and must abide the decisions of those causes.

JAS. GRANT,
For the Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES *ex. re.* THOMAS BUTZS,

PLAINTIFF IN ERROR.

VS.

THE MAYOR AND ALDERMEN OF THE CITY OF MUSCATINE,

DEFENDANT IN ERROR.

ERROR FROM THE DISTRICT OF IOWA.

ARGUMENT FOR PLAINTIFF IN ERROR.

BY JAMES GRANT.

GAZETTE COMPANY, STEAM BOOK AND JOB PRINTERS, DAVENPORT, IOWA.

SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES *ex. re.* THOMAS BUTZS,

PLAINTIFF IN ERROR.

VS.

THE MAYOR AND ALDERMEN OF THE CITY OF MUSCATINE,

DEFENDANT IN ERROR.

ERROR FROM THE DISTRICT OF IOWA.

ARGUMENT FOR PLAINTIFF IN ERROR.

BY JAMES GRANT.

GAZETTE COMPANY, STEAM BOOK AND JOB PRINTERS, DAVENPORT, IOWA.

SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES IN THE RELATION OF THOMAS BUTZS,
Plaintiff in Error.
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF MUSCATINE,
Defendants in Error.

ERROR FROM THE DISTRICT OF IOWA.

ARGUMENT FOR THE PLAINTIFF IN ERROR.

CASE.

Thomas Butzs, on the 16th of May, 1867, received judgment against the city of Muscatine, for $57,605.16 and costs, in the Circuit Court for the District of Iowa.

Execution was issued on said judgment and returned "no property found."

The City of Muscatine is a municipal corporation created by the laws of Iowa, whose business affairs are managed by a Mayor and Board of Aldermen, whose duty it is to levy and collect its taxes and pay its debts.

The relator under the laws of Iowa filed his information, and upon it an alternative writ of mandamus was

issued to compel the levy and collection of a tax to pay said judgment.

The information and writ are based on the provisions of the code of Iowa, and allege the recovery of the judgment, issue of execution and return, that a demand had been made to the Mayor and Aldermen to levy and collect a tax sufficient to pay said judgment, and refused; that the corporation has no property subject to execution from which the money can be made;

That by the laws of Iowa in force when the debt was contracted and the judgment rendered, the public property of the city necessary to carry out the purpose for which it was created, and the private property of the citizen were exempt from levy to pay said debtor judgment, but that it was made the duty of said Mayor and Aldermen, as early as practicable, after said judgment was recovered, to levy a tax sufficient to pay said judgment, with interest and costs;

That the Mayor and Aldermen had, after the issue of said execution and demand, and a lapse of a reasonable time, refused to perform that duty;

That the relator is without other adequate remedy at law, and the writ commands the levy of a tax sufficient in that they show cause to the contrary.

ANSWER.

The defendants answered:

1. Denying all the allegations of duty set out in the information;

2. That the City of Muscatine was created under certain laws of the State of Iowa from 1857 to 1864, which are set out, and that by these laws the Mayor and Aldermen are authorized to levy and collect in any one year a tax of only one per cent. on the city valua-

tion; and that they have levied such tax for the year 1867, and it is all required for city purposes;

3. That for the year 1868, the city government will require all the tax which the corporation can lawfully levy to build roads, bridges, and other necessary city expenses, and that the city has appropriated one-half the tax for roads and bridges, and the tax payers have the option of working out said one-half.

DEMURRER.

The plaintiff demurred to this return for the following causes:

1. To that clause of the return which denies the duties which are alleged in the alternative writ, because such denials are denials of conclusions of law, resulting from the statement of facts in the writ and cannot be traversed;

2. To that part of the answer which sets up limitation of the taxing power of the corporation, by the city charter to one per cent. a year, because the execution laws of Iowa exempt public and private property of the corporation from levy and sale on judgments, and confers upon the City Council power to levy a tax sufficient to pay the judgment, totally independent of the city charter;

3. To all that part of the return which sets new city debts and expenses, and the appropriation of the whole revenue of one per cent. for other purposes, necessary for the city's welfare, because the judgment has a lien on all the revenue of the city, after expenses of collection over and above all other or subsequent creditors, and the corporation cannot deprive the creditor of this lien by such appropriation to other purposes.

The court below overruled the demurrer, the plaintiff abided by it, the suit was dismissed and the plaintiff

took his suit, assigning for causes of error the overruling of the demurrer and dismissal of the suit.

ARGUMENT.

The first cause of demurrer is self-evident. It is elementary, that "matters of law resulting from the statement of facts, cannot be traversed."

Tapping's Mandamus, 351, Margin.

This is not a matter of any grave import and would not be brought to the attention of the court, but for the prevalence of an idea among some legal minds, that under code practice you may deny even matters of law.

The second cause of demurrer is based on the following provisions of the Iowa Code of 1851, re-enacted under the Code of 1860.

Code of 1860, §3274, (1895 of the Code of 1851).

"Public buildings owned by the State, or any county, city, school district, or other civil corporation, and any other public property, which is necessary and proper for carrying out the general purpose for which any such corporation is organized, can exempt from execution. The property of a private citizen can in no case be levied upon to pay the debt of a civil corporation."

§ 3275, (1896, Code of '51):

"In case no property is found on which to levy, which is not exempted except by the last section, a tax must be levied as early as practicable sufficient to pay off the judgment, with interest and costs."

§ 3276, (1897 Code of '51):

"A failure on the part of the officers of the corporation to comply with the requirements of the last section renders them personally responsible for the debt."

The third cause of demurrer denies the position assumed by the defendants,

That the corporation having a necessary use for current expenses, etc., debts to be created, of all the revenues, which it is authorized to raise by the city charter, can appropriate them for such purposes, and thus evade the effect of the plaintiffs judgment and executions.

Both these propositions we shall argue together.

As to the meaning of section 3275 of the Code, the language is so plain and direct, that we should not feel called on to discuss it, but for a decision of the court below, in the case of the United States ex. re. Leaned vs. Mayor and Aldermen of Burlington, reported in 2d vol., new series of Law Register, page 394, and the case of Clark, Dodge & Co. vs. the City of Davenport, 14 Iowa, 4964.

In the case of Learned vs. Burlington, Justice Miller, in his opinion, argues that the Code 51 refers to general act of incorporations authorized by that act, and there is a conflict between the special charter of Burlington, of 47, authorizing a tax of one per cent., and the Code execution law and that the two laws must be so construed so as to make both stand, and that the code means not what it says, the levy of a "tax sufficient to pay the judgment," but such levy, provided it does not exceed one per cent. the amount authorized by the city charter, and he further argues that the "city by resorting to its power to make contracts, may impose upon the property holders a tax unlimited in amount or duration," and this ought not to be done.

The first portion of this argument is not at all tenable. The general interpretation of the duties of municipal corporations and the rights of creditors, prior to the enactment of the principles of the Iowa execution

laws was thus, where a creditor had judgment against a a municipal corporation, and there was no public property found, out of which to make the judgment, the creditor had a right to levy upon the private property of the members of the corporation to satisfy his debt. The Iowa execution law recognizes this principle, and by general provisions exempts both the public and private property of the corporation and its members from execution, and requires in lieu thereof, that a tax should be levied as early as practicable to pay off the judgments with interest, not a tax under the charter of the corporation and within its limits, but a tax to pay judgment, interest and costs, in lieu of the sale of public and private property of the corporation. The execution law then is a new, absolute and unqualified grant of power to all civil, meaning public or municipal corporations, to levy taxes, to pay judgments, in lieu of the levy and sale of public and private property. And the execution law applies to all civil corporations, as with those created before, as after its passage. It reserves public property for public use, and exempts one corporator's property from the compulsory payment of a public debt, and gives to the creditor, in place of these rights enjoyed by him before, the right to compel the levy of a tax to pay his whole judgment. It is a grant of power for a consideration expressed, without limitation or reference to the special taxing power of the corporation.

The argument, by Justice Miller, that the taxing power is likely to be abused, by the managing power of the corporation against its members, is we conceive the argument of one party to the contract. The authorities of the city are the agent's servants and members of the corporation. If power is given them to *make* contracts for the members, the duty devolves, or

should devolve on somebody to execute them. It is not wise, it is not morality, it is not justice to authorize corporations to make contracts to pay money, which they cannot execute. If the "wisdom" referred to in the argument is indicated by events occurring since, what are those events? They are not stated. We can conceive of no "wisdom" which authorizes the creation of debts by contract, which the law prohibits from being paid. If the events subsequent, referred, mean that the majority of the populace under their voting power, required the governing body, their servants, to make contracts which they find burdensome, and now seek to repudiate, then we utterly repudiate any such wisdom. It were "wise" to curtail the power of contracting even at the demands of popular clamor, and not to construe laws against their plain language to suit the changing opinions of the hour, which sustains a public corporation in making a contract to-day which is repudiated to-morrow.

The case of Clark *vs.* Davenport, 14 Iowa, 494, has no logic in it. "The action of the Code," says the Judge, page 499, applies to all corporations as organized under the general law, passed at the same time. This is not correct. It applies to all city charters organized before or after the general law. The general law of corporations, like all special laws, has a limit to the power of taxation. This statute §3274 and 1895 of 51, applies to any county, city, or other civil corporation.

"The defendant" say the Court (page 500) was created by special law, could not constitutionally exist, except by special legislation, and if not, no statute, general in its provisions could apply to it, or control its powers:" Why, what a jumble of nonsense with due respect to the Court. The Constitution did not repeal any special city charters. It required them to be created by gen-

eral, not "special laws," as said by the court, and the general law authorized all cities under special laws to accept the general terms. It is certainly not good logic to say that no general law could not be made which could be large enough to apply, to regulate or control the powers of a city, created by special charters.

This court says, 500, this section 1896, code 51, occurs incidentally in the chapter in relation to executions. It does not purport to be an amendment to the defendants charter, nor does it principally relate to corporations for city purposes. It does not confer such power as would justify a levy of a special tax, as is pertinently asked by the court below. Suppose the city charter gave no power to levy a tax, would this section do. "It is too vague and barren." On what property would the tax be levied, by whom and how collected?

Analize this logic. "It does not purport to amend the Davenport Charter." No one argues that it does. It gives new rights and imposes new duties on all city corporations, and is to that extent an amendment and no more. It don't refer to any particular city, but to all "cities, counties, and civil corporations."

"It does not specifically refer to corporations for city purposes." Justice Baldwin did not read the whole statute or he could not have made that blunder—"Public buildings § 3274, owned by the State, any county, or *city*—are exempt from execution. The property of a private citizen can in no case be levied upon to pay the debt of a civil corporation," §3274.

"It does not confer any such grant of power, as would justify the levy of a special tax." §3275, says "A tax must be levied, or return of no property to pay off the judgment." If a tax must be levied to

pay off a judgment, it must be a special tax for that purpose and can be no other.

"Suppose," says the court, the city charter contained no power to levy and collect a tax, "would this section give the power?" Certainly, and no stronger argument can be made as to the objects and purposes of this law, than to say, that a city is authorized to make contracts, but has no specific power under its charter to levy any tax. This general law gives the power to levy a tax to pay the judgment.

"On what property would the tax be levied, and who collect and how collected," says the court.

The statute answers:

"A tax" §3275 must be levied as soon as practicable upon the taxable property of the corporation; not upon that which is exempt. "By whom collected;" §3276, provides a punishment on the officers of the corporation for failure to levy the tax. "How collected." As other taxes are collected, under the general provisions of the State, county or city law for the collection of taxes.

The language of the law is plain, there is no doubt to be solved, no interpretation to be interpolated to make sense.

A perfect answer to the position that this execution law does apply to all city corporations is this: If it does not apply, then all the public property of the corporation and private property of the inhabitants thereof, is subject to execution and sale, under the general principles of known laws, applicable to this subject.

But the defendents not only say they are not bound to levy and collect a tax under the execution, in excess of their ordinary power of taxation, but that if they wish to use all the taxes they can levy under the city charter, they can create new debts and apply their taxes to these new debts.

On this question there is an apparent conflict in the decisions of the Iowa Supreme Court.

That court in Coy vs. City Council of Lyons, 17 Iowa 1, held

That a city corporation, on return of nulla bona, could be compelled by Mandamas, not only to levy taxes to the utmost limits of the special powers granted by the charter, but that a creditor who recovers judgment, and demands payment, acquires a right to all the funds of the corporation, which will be enforced by this writ, over simple contract creditors and that they must set apart these funds for the payment of the judgment, in preference to newly created debts.

And this court in U. S. *ex. re.* Walkly vs. City, of Muscatine, 6 Wallace—held, that the remedy to be sought in said case, was by Mandamas, and not by bill in equity.

But the Iowa Supreme Court in Porter *vs.* Thompson, 22 Iowa 391,—interpreting this clause of the execution law, which gives the plaintiff an action for refusal to levy a tax after execution, held, that the city officers are not liable for refusing to set aside a portion of the tax levied if the corporation expenses are so large as to absorb the whole revenue under the charter, and though the court do not undertake to reverse the case of Coy vs. Lyons 17, Iowa 1, or make any allusion to it, they doubt its correctnesswithout referring to it in the latter part of the opinion.

The opinion in 17 Iowa, is correct law, and being made on general principles would be adopted by this court, even if reversed by the Iowa Supreme Court, because the decision in 17 Iowa "is one of a general character, and not rising under local law."

Provident Institution for Savings *vs.* Commonwealth of Mass. (6 Wallace.)

But we shall be told, that on the question of interpreting the execution law, which exempts public and private property from execution and gives the creditor a specific tax, the State decisions must control this court.

Not so—for in the case in this court last cited with numerous other cases, and particularly the case of Jefferson Brauer Burch *vs.* Skelly 1, Black 443, this court, held, "where it is called upon to interpret contracts, though made in the forms of law or by the instrumentally of a States authorized functionaries, in conformity with State Legislations, it does not folthe State decisions.

"It has never been denied that the Supreme Court of the United States has appellate power to reverse the judgment of a State court, whenever such a court shall adjudge that not to be a contract, which has been alleged in the form of legal proceedings, by a litigant to be one, within the meaning of that clause of the Constitution, which prohibits the States from passing any law impairing the obligation of contracts. Of what use would the appellate power be to the litigant, who feels himself aggreived, by some particular State Legislature, if this court could not decide independently of all adjudication by the Supreme Court of the State, whether or not the phraseology of instrument, in controversy was expressive of a contract and within the protection of the United States, and that its obligation should be enforced notwithstanding a contrary conclusion by the Supreme Court of the State. It never was intended, and cannot be restrained by any course of reasuming that this court could or should with fidelity to the constitution of the United States follow the construction of the Supreme Court of a State in such a matter when it entertained a different opinion, and in forming its judg-

ment in such case, it makes no difference in the obligation of this court in reversing the judgment of the Supreme Court of a State upon such a contract, whether it be one claimed to be such under the forms of State Legislation, or has been made by a covenant or agreement by the agents of a State, by its authority.

1 Black, 443.

Van Hoffman vs. City of Quincy, 4 Wallace, 535.

If a State court can evade the obligations of a remedy which is part of a contract, by interpreting a law contrary to its plain reading and then call upon this court to follow its reading, then all remedies which are material to a contract and constitute the life of it are at an end.

JAS. GRANT,
For Plaintiff in Error.